

PATENT
Docket No. 358362001101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of:

David A. DALMAN, *et al.*

Serial No.: 09/880,834

Filing Date: June 15, 2001

For: BALLISTIC-RESISTANT ARTICLE AND
PROCESS FOR MAKING THE SAME

Examiner: Elizabeth M. COLE

Confirmation No.: 7037

Group Art Unit: 1771

Customer No.: 25227

APPELLANTS' REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I. INTRODUCTION

Appellants submit this reply in response to the Examiner's Answer dated November 4, 2004. Appellants respectfully submit that the Examiner's position is incorrect as a matter of law and/or fact. Thus, for the reasons set forth below and for the reasons set forth in Appellants' Opening Brief, appellants respectfully request that the Board reverse the rejections of claims 1-15 under 35 USC 102(e) and of claims 11 and 12 under 35 USC 103(a).

II. ARGUMENT

In the Answer, the Examiner contends that Weber discloses a fabric or clothing article made from polybenzoxazole fibers that has ballistic resistance suitable for use as soft armor and is made from untwisted fibers of no more than 500 denier as claimed. As explained in Appellants' Opening Brief and as further detailed below, the Examiner's conclusions are incorrect.

A. The Record Does Not Support The Examiner's Failure To Give Weight To The Ballistic Resistance Of The Claimed Articles As A Distinction Over The Disclosure Of Weber.

Appellants claim a fabric or clothing article that has "ballistic resistance suitable for soft armor." Weber discloses cut resistant articles. In the Examiner's Answer, the Examiner states that the limitation "ballistic resistance suitable for soft armor" is a statement of use and does not seem to give any patentable weight to this limitation. (See page 5, line 20 through page 6, line 7). "Ballistic resistance suitable for soft armor" is not a statement of intended use, but is rather a description of a physical property of the claimed fabric or clothing article: A ballistic resistant article that is suitable for soft armor (e.g., a bullet-proof vest) has strength and other properties such that it will withstand the impact of high velocity projectiles. As detailed in Appellants' Opening Brief, an article designed to be ballistic resistant is completely different than an article designed to be cut resistant. Specifically, some of the differences include how the fibers of the article are held together and the choice of fiber denier.

In essence, the Examiner is relying on unsupported assertions of inherency to support the citation of Weber by citing Weber as disclosing an article that has ballistic resistance suitable for soft armor. The Examiner has neither cited evidence in the record nor provided an articulated statement of a technically supported reason to believe that the cut resistant articles disclosed in Weber have ballistic resistance at all. *Cf.*, MPEP 2112.IV, which requires an Examiner to "provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior

art.” [Emphasis in original.] This record does not support the Examiner’s refusal to recognize the differences between the claimed ballistic resistant articles and Weber’s cut-resistant articles.

**B. The Examiner’s Reading Of Weber Is Not Supported By What Weber
Actually Discloses To Persons Of Ordinary Skill In The Art.**

The Examiner’s Answer states that “Weber clearly teaches untwisted yarns, by stating that in addition to holding the continuous filaments together by twisting, the filaments could also be held together by the application of a finish. . . . It is not necessary that Weber teach specific advantages for employing untwisted yarns, since Weber clearly teaches untwisted yarns.” (See page 5, lines 14-19). The section in Weber cited by the Examiner states that the filaments “are held together by known means, such as twisting, entanglement or application of a finish.” (See Weber, column 5, lines 16-21). However, Weber does not specifically teach using untwisted fibers; Weber simply states that the fibers can be held together by **known means** and provides some examples of known means. Furthermore, both of the Examples in Weber disclose only articles made from twisted yarns. Consequently, Weber only discloses the use of twisted yarns, not untwisted yarns as claimed. This is not a distinction without a difference, because the result of appellants’ invention is ballistic resistance, a property unappreciated by Weber and not shown on this record to be exhibited by Weber’s cut-resistant articles.

Finally, the Examiner’s Answer states that Weber “clearly” discloses fibers having a denier of less than 500 as claimed. Weber, however, states that the denier is “most preferably at least 500 denier,” and the fiber deniers used in the Examples are all well over 500 denier. Higher deniers than those claimed by appellants are used in Weber because Weber, again, is attempting to produce a cut resistant article, not the claimed ballistic resistant article, and discloses no good reason to use the smaller denier fibers claimed in the overall combination that is appellants’ invention. Accordingly, the higher deniers used in Weber shows that Weber fails to teach the claimed ballistic resistant articles.

Since Weber fails to disclose articles having ballistic resistance suitable for soft armor or how to achieve the claimed ballistic resistance, Weber would not put one of ordinary skill in the art in possession of appellants' invention or lead such a person to produce the claimed ballistic resistant article. This is especially true since Weber suggests using twisted fibers and a denier above 500 to produce the articles it actually discloses.


CONCLUSION

For the foregoing reasons and the reasons stated in Appellants' Opening Brief, appellants respectfully request that this Board reverse the rejections of claims 1-15.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, appellants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. **358362001101**.

Dated: January 4, 2004

Respectfully submitted,



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